



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

ELC MISC APPLICATION NO. 97 OF 2016

MURIUKI NDUBI.....PLAINTIFF

VERSUS

PATRICK MUCHAI NKUMBUKU.....DEFENDANT

MARY RIMA M'MUGAMBI.....APPLICANT

RULING

1. The application dated 6.12.2016 seeks the following orders

(i) Spent.

(ii) That the Honourable court be pleased to authorize/empower the Executive Officer to sign/Execute all necessary instruments to effect transfer of land parcel No. Abothuguchi/Kariene/3580 into the names of the purchaser, Mary Rima M'Mugambi in order to vest land parcel No. Abothuguchi/Kariene/3580 into her name.

(iii) The production of the original title to land parcel No. Abothuguchi/Kariene/3580 be dispensed with.

(iv) All prohibitions/restrictions placed over land parcel No. Abothuguchi/Kariene/3580 be lifted forthwith.

(v) The Honourable court be pleased to issue such further or better orders as will meet the ends of justice.

(vi) Cost of the application to be provided for.

2. The grounds in support of the application are that;

(i) The applicant attended, bid and was declared the highest bidder over land parcel No. Abothuguchi/Kariene/3580 at an auction conducted by M/S Japhet R. Nkonge Auctioneers on 24th July 2015.

(ii) The auction price was Kshs. 1,205,000/=

(iii) The applicant has paid the entire Kshs.1,205,000/=

(iv) The judgment debtor is unknown to the applicant and the applicant requires the title to be transferred to her.

(v) The Honorable court ought to authorize its executive Officer to execute/sign all instruments to effect transfer of land parcel no. Abothuguchi/Kariene/3580 to the applicant.

(vi) The production of the original title should be dispensed with.

3. Applicant has also filed a supporting affidavit where she has deponed as follows; that on 24th July 2015 she attended the bid and was declared the highest bidder for land parcel No. Abothuguchi/Kariene/3580 which land parcel had come up for auction by M/S Japhet R. Nkonge Auctioneers to meet the decree in this matter - see annexure marked MRM1 and 2 which are copies of memorandum and certificate of sale respectively. She averred that her bid price was Kshs.1,205,000 which she paid in full as is evident from annexure marked MRM 3

and 4, which are receipts for Kshs.300,000/= and Kshs.905,000 respectively. That she paid upon the fall of the hammer sh. 300 000, while the balance of Kshs.905,000/=, she paid through her advocates.

4. Applicant avers that she is not aware of the whereabouts of the defendant/judgment debtor whom she believes in any event would not be keen on executing the transfer instruments herein and that she believes the current registered owner is still holding onto the original title deed. Her prayer is that the court do authorize the executive officer to execute instruments to effect transfer and that the court to order the lifting of all restrictions/inhibitions over the title of the aforementioned parcel of land and the production of the original title deed be dispensed with.

5. The genesis of this matter is to be found in Meru CMCC no. 282/13 which file I have called for and I have perused. In that suit one Muriuki Ndubi had sued Patrick Muchai Nkumbuku claiming general damages for breach of an agreement of sale of land Abothuguchi/Kariene/3580. Defendant had filed a defence and counter claim where he sought for specific performance or for refund of the monies paid with interest.

6. Judgment was delivered on 20.1.2015 where by plaintiffs case was dismissed while defendants counter claim was allowed.

7. Plaintiff was thus condemned to pay shs. 102,500 as refund of monies paid plus interest from date of filing the suit. Further plaintiff was to pay Shs.460,000 being the agreed amount of liquidated damages for breach of contract. Plaintiff was also to pay for costs of the suit.

8. It appears that plaintiff was unable to defray the costs arising out of that judgement. Thus an application was filed on 23.4.2015 in the lower court file for approval of sale of property Abothuguchi/Kariene/3580. The application was unopposed and was allowed on 7.5.2015. Thus the above mentioned parcel of land was sold through public auction by Japhet R. Nkonge Auctioneers to the present applicant.

9. This miscellaneous file was filed pursuant to the orders given on 11.4.2016 before the CM's court in the lower court case..

10. On 26.7.2017, the two litigants in the lower court case were present in court before me and so was the counsel for applicant. The court gave directions for these two litigants (plaintiff and defendant) to file and serve their responses to the present application within 21 days. These orders were not complied with. The two respondents also never appeared before me again.

11. On 29.1.2019, after confirming that service had been effected upon the two respondents, the court reserved a date for ruling.

12. I find that the present application is meant to facilitate the transmission of the land Abothuguchi/Kariene/3580 to the applicant who purchased the land through auction.

13. In the circumstances, I find that the application is merited.

14. I proceed to give the following orders:

(1) Application dated 6.12.2016 is allowed with no orders as to costs.

(2) A copy of this ruling is to be placed in Meru file C.M.C.C. No. 282/13.

(3) Thereafter, the file Meru CMCC 282/13 is to be remitted back to the lower court.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 13TH FEBRUARY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muthamia holding brief for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE